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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR  
and POLINA TSATRYAN.

B278920

ARTHUR TSATRYAN,

(Los Angeles County  
Super. Ct. No. BD512645)

Appellant,

v.

POLINA TSATRYAN,

Respondent.

APPEAL from an order of the Superior Court of Los  
Angeles County, Shelley Kaufman, Judge. Reversed.

Arthur Tsatryan, in pro. per., for Appellant.

No appearance for Respondent.

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## INTRODUCTION

This is the ninth appeal by Arthur Tsatryan<sup>1</sup> in this marital dissolution action. On May 21, 2015 the trial court entered a judgment of dissolution of Arthur and Polina's marriage. In the judgment, the trial court found the parties' former residence, known as the Santa Clarita property, was community property. The judgment provided that the property was to be sold and the proceeds divided evenly, subject to the equalization payments set forth elsewhere in the judgment. We affirmed the judgment. (*In re Marriage of Tsatryan* (Feb. 13, 2018, B265467) [nonpub. opn.].)

In a separate opinion we affirm the trial court's order awarding the Santa Clarita property to Polina and ordering Arthur to pay attorney's fees based on his breach of fiduciary duty and failure to disclose his encumbrances on the property (B270784). We also affirm the trial court's order denying Arthur's request to quash a writ of possession (B276299). In this appeal, Arthur contends the trial court erred in denying his request to remove a levy on his bank accounts after the court clerk issued a writ of execution on the \$65,000 award of attorney's fees, plus interest and fees. Because the trial court failed to exercise its discretion on whether to issue the writ of execution, we reverse.

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<sup>1</sup> As with our previous opinions in this matter, we refer to Arthur and Polina Tsatryan by their first names for the sake of convenience and clarity, intending no disrespect.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

### A. *Background*

Arthur and Polina were married on August 5, 1987. They separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23, 2009. (*In re Marriage of Tsatryan, supra*, B265467.)

Following a two-day trial, on May 21, 2015 the trial court entered a judgment of dissolution. The trial court found the parties' Santa Clarita property was community property and ordered the property be sold and the proceeds divided evenly, subject to equalization payments. The trial court also awarded Polina attorney's fees. Arthur appealed, and we affirmed. (*In re Marriage of Tsatryan, supra*, B265467.)

### B. *The Trial Court's Order Awarding the Santa Clarita Property to Polina and Ordering Arthur To Pay Attorney's Fees (B270784)*

On August 26, 2015 Polina filed an ex parte request for an order shortening time on her request to have the court clerk execute on behalf of Arthur the listing agreement documents required for sale of the Santa Clarita property. As part of the requested relief, Polina sought an order requiring Arthur to vacate the property and give her exclusive possession so she could prepare the property for sale, as well as an order that Arthur pay \$15,000 in attorney's fees.

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<sup>2</sup> In our discussion of the factual and procedural background of the case, we focus on the proceedings relevant to this appeal. We discuss the earlier proceedings leading up to the judgment of dissolution in *In re Marriage of Tsatryan* (Nov. 9, 2016, B262680) (nonpub. opn.).

The trial court denied the request for an ex parte order, but later ruled it would consider Polina's request in conjunction with her request for an order partially vacating the judgment.

On September 24, 2015 Polina filed a request for an order partially vacating the judgment of dissolution as to equal division of the equity in the Santa Clarita property. Polina also requested that the trial court order Arthur to pay \$50,000 in attorney's fees and costs as sanctions pursuant to Family Code sections 271, subdivision (a), and 2107, subdivision (c).<sup>3</sup> The trial court set the hearing for November 3, 2015.

At the November 3, 2015 hearing the trial court<sup>4</sup> found Arthur had committed an "egregious" breach of fiduciary duty, with malice, oppression, and fraud as defined by Civil Code section 3294, and awarded 100 percent of the Santa Clarita property to Polina, plus \$65,000 in sanctions. The trial court filed an order after hearing on January 26, 2016, as part of which it ordered Arthur to pay to Polina's attorneys "as and for attorney's fees and sanctions the sum of \$65,000 . . . because of the egregious nature of the breach," citing to Family Code sections 271, subdivision (a), 1101, subdivision (h), and 2107, subdivision (c).

The trial court retained jurisdiction over the Santa Clarita property, execution of an interspousal transfer deed, and all issues related to the encumbering deeds.

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<sup>3</sup> Further undesignated references are to the Family Code.

<sup>4</sup> Judge Mark A. Juhas.

C. *Arthur's Request for an Order Removing the Levy on His Bank Accounts (B278920)*

On June 1, 2016 Polina filed an application for issuance of a writ of execution for the \$65,000 order for attorney's fees and sanctions payable to Polina's attorneys. On June 6 Arthur filed a notice of change of address, which was received on June 9, 2016 by Polina's attorney, Steven Fernandez.<sup>5</sup> On June 9 the court clerk issued the writ of execution in the amount of \$67,268.84, reflecting the total judgment plus interest and fees. On June 21 Fernandez provided the sheriff's department with copies of the writ of execution and requested that it levy on Arthur's bank accounts. Fernandez provided the sheriff's department with Arthur's old and new addresses.

On July 25, 2016 Arthur filed a request for an order requiring Polina to remove the levy on his bank accounts. According to his supporting declaration, on July 13 Arthur discovered the balance on his Citibank account was zero. When he contacted the bank, he was directed to call Polina's attorney. On July 16 Arthur received a copy of the writ of execution from the sheriff's department, which had been forwarded by the post office. Arthur argued he had no ability to pay the award of attorney's fees, and the award was unfair because Polina was receiving money for child support and attorney's fees and enjoying a "lavish life" while Arthur "struggle[d] to survive, getting deeper and deeper in debt."

At the September 12, 2016 hearing, the trial court rejected Arthur's challenge to the validity of the January 26, 2016 order

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<sup>5</sup> The record contains a copy of the unfiled notice of change of address dated June 3, 2016; however, Fernandez states in his declaration the notice was filed on June 6, 2016 and received by Fernandez on June 9, 2016.

on which the writ of execution was based, stating that “it’s a valid order and it is not properly before the court as a motion for reconsideration.” The court explained that because there was a valid order, there could be “a writ of execution issued because in this case that judgment is for attorney’s fees . . . and the attorney becomes a judgment creditor. [¶] Having received no funds from [Arthur], the writ of execution as authorized by Code of Civil Procedure [section] 699.510 was issued.”

The trial court rejected Arthur’s argument that he was not given proper notice, pointing out that Arthur did not file a change of address until after the writ of execution was issued and the sheriff’s department was provided with both Arthur’s old and new address. The trial court also noted Arthur never filed a request for exemption pursuant to Code of Civil Procedure section 703.520, subdivision (a).<sup>6</sup>

The trial court denied Arthur’s request. Arthur timely appealed.<sup>7</sup>

## DISCUSSION

Arthur raises a number of challenges to the trial court’s denial of his request for an order removing the levy on his bank accounts, including that the trial court erred in issuing the underlying order requiring him to pay attorney’s fees, the court clerk improperly signed the writ of execution instead of the trial

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<sup>6</sup> Under Code of Civil Procedure section 703.520, subdivision (a), a claimant may file a claim of exemption within 10 days after receiving notice of a levy on a property.

<sup>7</sup> On November 7, 2016 the trial court relieved Fernandez as Polina’s counsel. Since that date Arthur has served Polina, who has not appeared in this appeal.

court, and Polina failed to submit an affidavit supporting her application for the writ of execution. We review questions of law on undisputed facts de novo. (*In re Marriage of G.C. & R.W.* (2018) 23 Cal.App.5th 1, 7; *In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443.) Although Arthur’s challenges to the January 26, 2016 order are not properly before us in this appeal,<sup>8</sup> he is correct the court clerk did not have authority to issue the writ of execution.<sup>9</sup>

Code of Civil Procedure section 699.510, subdivision (a), provides that “after entry of a money judgment, a writ of execution shall be issued by the clerk of the court, upon application of the judgment creditor, and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server.” However, Code of Civil Procedure section 699.510, subdivision (b), provides, “If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of the

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<sup>8</sup> An appeal is limited to the judgment from which the party appeals. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846 [appeal limited to judgment from which appellant appealed, not later judgment]; *Faunce v. Cate* (2013) 222 Cal.App.4th 166, 170 [“Our jurisdiction on appeal is limited in scope to the notice of appeal and the judgment or order appealed from.”].) In any event, we have concluded in a separate opinion that Arthur’s challenge to the January 26, 2016 order lacks merit. (*In re Marriage of Tsatryan* (Jan. 14, 2019, B270784, B276299) [nonpub. opn.].)

<sup>9</sup> Because we conclude the trial court erred in denying Arthur’s request to remove the levy on his bank accounts, we do not reach his contention he failed to receive timely notice of the writ of execution or his other contentions on appeal.

Family Code.” Family Code section 290 provides that an order entered under the Family Code may be enforced “by any other order as the court in its discretion determines from time to time to be necessary.”

As the Court of Appeal concluded in *In re Marriage of Farner* (1989) 216 Cal.App.3d 1370 (*Farner*), in construing the predecessor statute to section 290, “the trial court . . . has discretion to determine in each case whether execution is an appropriate remedy for enforcing its order.” (*Farner*, at p. 1377, quoting *Messenger v. Messenger* (1956) 46 Cal.2d 619, 630.) The court in *Farner* reversed the trial court’s order denying the motion to quash a writ of execution, concluding the trial court failed to exercise its discretion on whether to issue the writ of execution. (*Farner*, at p. 1377.)

As in *Farner*, the trial court here did not exercise its discretion on whether to issue the writ of execution, instead stating, “[o]nce there is a valid order, the respondent is able to have a writ of execution issued because in this case that judgment is for attorney’s fees . . . and the attorney becomes a judgment creditor.”

In addition, section 5104 provides that “[t]he application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid that is authorized to be enforced,” including interest. (§ 5104, subds. (a), (b).) The affidavit must be filed in the proceeding and attached to the writ of execution served by the levying officer on the judgment debtor. (§ 5104, subd. (c).) Here, the application included Fernandez’s statement under penalty of perjury setting forth the amount of the judgment and accrued interest. However, it does not appear from the record that the Fernandez affidavit was attached to the writ of execution.



## **DISPOSITION**

We reverse the order and remand for the trial court to exercise its discretion whether to issue the writ of execution. Arthur is to bear his own costs on appeal.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.